



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

JUN 13 2017

**MEMORANDUM**

**SUBJECT:** Enforcement and Compliance FY 2017 Reporting Plan

**FROM:** John Dombrowski *J. Dombrowski*  
Deputy Director, Office of Compliance

**TO:** Regional Enforcement Division Directors  
Regional Enforcement Coordinators  
Regional Counsels  
Superfund Information Management Coordinator  
OECA Office Directors and Deputy Office Directors

This memorandum and its attachments provide the process and deadlines for reporting, reviewing, and certifying federal enforcement and compliance data for fiscal year (FY) 2017. The Reporting Plan provides guidance and direction that promotes consistent comparisons to prior year results. There are some changes since FY 2016 reporting, but generally they are small adjustments.<sup>1</sup>

Please pay particular attention to the FY2017 schedule, the description of new reporting requirements, and changes to existing requirements. As in previous years, most of the data quality review can be completed using the features of the Office of Enforcement and Compliance Assurance (OECA) Federal Enforcement and Compliance Dashboard (FE&C Dashboard). Integrated Compliance Information System (ICIS) reports are also available, which may be run by each region if more detailed action-specific data are desired.

**End-of-Year Certification**

***Regions have until October 16, 2017<sup>2</sup>, to enter all FY 2017 data.*** All enforcement and compliance monitoring data should be entered into ICIS within two weeks after an activity occurs to avoid a surge of data entry at end-of-year. We recognize that in some instances this is not possible in which case all data must be entered by October 16, 2017. Timely data entry is critical because senior level managers regularly check the FE&C Dashboard looking for specific case entries.

<sup>1</sup> This guidance may change for FY 2018 based on direction from the new Administration.

<sup>2</sup> Superfund data will continue to be pulled on the 10<sup>th</sup> business day in October 2017, which is October 13. Therefore, all Superfund data should be entered prior to October 13, 2017.

Between October 1 and 20, 2017, Regions and Headquarters offices will identify and correct any outstanding data errors or omissions. On October 20, 2017, Regions and Headquarters offices will use their Select Measures Workbook to manually provide the additional required numbers. The final FY 2017 certification form will be available by September 29, 2017.

If you have any questions concerning the certification process, please contact Sara Ager, Leader, Reports Team, at (202) 564-7968. If you have questions concerning the National Priorities/ Enforcement Initiatives or the Annual Commitment System (ACS) process or measures, please contact Michele McKeever, Chief, National Planning and Measures Branch at (202) 564-3688.

#### Attachments

cc: Lawrence Starfield, Acting OECA AA  
Dave Cozad, Acting OECA Principal DAA  
Lauren Kabler, OCE  
Monica Gardner, OSRE  
Lance Elson, FFEO  
Mary Bell, OSRE  
Zaheeda Abedin, OSRE  
Jennifer Youngberg, OCEFT

Regional Media Enforcement Coordinators  
Regional Federal Facility Program Managers  
Federal Facility Regional Liaisons  
Regional ICIS Data Entry Stewards  
RCRAInfo System Administrators  
Office of Civil Enforcement Managers  
Superfund Enforcement Management Coordinators  
Superfund Regional Counsel Branch Chiefs  
OC/ETDD Management and Staff

<b><u>FISCAL YEAR (FY) 2017 KEY REPORTING AND CERTIFICATION DATES FOR 3<sup>RD</sup> AND 4<sup>TH</sup> QUARTERS</u></b>	
<b><u>DATE</u></b>	<b><u>ACTION</u></b>
<b>July 14, 2017</b>	<b>Data Entry Deadline for All Data Thru June 30, 2017</b> - All data through June 30, 2017, has been entered into the database of record.
<b>July 21, 2017</b>	<b>Completion of Data Quality Review</b> <ol style="list-style-type: none"> <li>1. All databases, and the FE&amp;C Dashboard, have been reviewed, and all data through June 30, 2017, has been entered into the database of record completely and accurately.</li> <li>2. ICIS Data Quality Review reports have been run, and identified errors and omissions have been corrected.</li> <li>3. DOJ Reports (Debts Assessed, Complaints Filed, and Referrals) have been reviewed, and identified errors and omissions have been corrected.</li> </ol>
<b>October 13, 2017</b>	<b>Data Entry Deadline for all Superfund Data</b> - Superfund data will be pulled on the 10 <sup>th</sup> business day in October 2017, which is October 13. All Superfund data should be entered into SEMS prior to October 13, 2017.
<b>October 16, 2017</b>	<b>Data Entry Deadline for FY 2017</b> - All data through September 30, 2017, has been entered into the database of record.
<b>October 20, 2017</b>	<b>Completion of Data Quality Review</b> <ol style="list-style-type: none"> <li>1. All databases, and the FE&amp;C Dashboard, have been reviewed, and the FY2017 data is complete and accurate.</li> <li>2. ICIS Data Quality Review reports have been run, and identified errors and omissions have been corrected.</li> <li>3. DOJ Reports (Debts Assessed, Complaints Filed, and Referrals) have been reviewed, and identified errors and omissions have been corrected.</li> <li>4. <b>Certification Deadline</b> - Regions and OECA offices certify that all FY 2017 data in the national database systems are accurate and complete.</li> </ol> <p>Any corrections requested after <b>October 20, 2017</b>, require a memorandum from the Regional Administrator (RA) or Office of Enforcement and Compliance Assurance (OECA) Office Director (OD) to the Director of the Office of Compliance (OC).</p>

Attachment 1

**THIS PAGE INTENTIONALLY LEFT BLANK**

## Table of Contents

### Data Entry

1. New Guidance on Tracking CAA, CWA, and RCRA Information Requests in ICIS
2. Revised Guidance: Entering FIFRA Notices of Refusal of Admission (NORAs) and FIFRA Notices of Warning (NOWs) into ICIS
3. FIFRA Section 7 Expedited Settlement Agreements (ESAs)
4. Changes to ICIS Enforcement Action Types for RCRA Subtitle I Expedited Settlement Agreements and RCRA Field Citations
5. Expanding Emergency Planning and Community Right-to-Know Act (EPCRA) §313 Compliance Monitoring Activities Beyond Traditional On-Site
6. Certain Voluntary Disclosures Still Required to be Entered into ICIS

### National Enforcement Initiative (NEI) Reporting

7. National Enforcement Initiative (NEI) Reporting Guide for FY 2017 and NEI Reports in ICIS
8. ICIS Reporting on Carryover and New NEIs
9. National Enforcement Initiatives: Initiated, Addressed, and No Further Action Definitions and Data Entry Requirements - for New and Carry-Over NEIs
10. MS4 NEI Reporting: Data Migration and Training Coming in FY 2017 (*Delayed from FY 2016*)
11. NEI Data Migrations for NSR/PSD (*Delayed from FY 2016*)
12. NEI Universe Data Imports for New NEIs
13. Reporting Environmental Benefits for NEI Cases with Multiple NEIs, and/or Core Program Activities
14. New Metric for Reporting Environmental Benefits from CAA 112(r) Cases

### Superfund Reporting

15. Superfund Enterprise Management System (SEMS) in FY 2017

### Environmental Justice

16. EJ 2020 Action Agenda: Reporting

### Reports

17. New Report: Certification National Enforcement Initiative Case Counts FY 2011 – FY 2019 report
18. Consolidated Reports: Four Inspection Conclusion Data Sheet (ICDS) Reports Now Consolidated into One ICIS Report
19. ICIS DQR - APOs with No Notice Pleading and No Penalty
20. Updated ICIS DQR Report: Federal Facility Actions Report

### **ICIS Updates**

- 21. New Subfolders Created for Some National Standard Reports
- 22. FE&C Dashboard Refreshed on a Weekly Basis

### **Data Quality Reminders**

- 23. EPA Administrative Cases Should Not Have State Penalties
- 24. Lead Regions Need to Communicate with Participating Regions on the Split of Case Outcomes
- 25. Providing Timely Documentation of EPA-Issued Stipulated Penalty Demand Letters to the Cincinnati Finance Center (CFC)
- 26. Referral Definition and Receiving Credit for a Civil Judicial Referral
- 27. Do Not Create New ICIS Referral Records for Supplemental Referrals
- 28. Closing Returned or Withdrawn Referrals
- 29. CERCLA 120(e) Records of Decisions (RODs) at Federal Facilities Must Be Entered in ICIS
- 30. Continuous Data Cleanup for Federal Enforcement Actions Migrated from AFS

## **Data Entry**

### **1. New Guidance on Tracking CAA, CWA, and RCRA Information Requests in ICIS**

In response to a recent request from senior management, the Office of Compliance and the Office of Civil Enforcement issued guidance, dated May 15, 2017, on tracking information requests in ICIS. The guidance can be found at:

<http://intranet.epa.gov/oeca/oce/io/documents/interiminformationrequesttrackingguidance.pdf>. The new guidance describes the data that must be reported in ICIS. A related memorandum signed by Susan Shinkman, Director of OCE, dated May 31, 2017, established procedures for OECA review of certain information requests before they are issued. (The memorandum can be found at: <http://intranet.epa.gov/oeca/oc/etdd/reporting/fy2017/index.html>) The information requests to be tracked by the region or HQ office issuing the request and reviewed by OECA include requests based on the following authorities:

- CAA Sec. 114
- CWA Sec. 308, and
- RCRA Sec. 3007.

As stated in the guidance, such requests must be entered into the ICIS Compliance Monitoring Module, beginning on May 15, 2017. A subset of those requests, if they meet the criteria in the above referenced Shinkman memo, must be reviewed by OECA prior to their issuance by enforcement staff. This became effective on May 31, 2017.

For further information, please contact Dan Holic at 202-564-7117 or [holic.daniel@epa.gov](mailto:holic.daniel@epa.gov)

### **2. Revised Guidance: Entering FIFRA Notices of Refusal of Admission (NORAs) and FIFRA Notices of Warning (NOWs) into ICIS**

In FY 2016, during the End-of-Year reporting process, an issue arose regarding the proper reporting and counting of FIFRA Notices of Refusal of Admission (NORAs) and FIFRA Notices of Warning (NOWs). In order to properly account for these FIFRA-specific formal enforcement actions and to ensure national consistency in reporting enforcement outcomes and environmental benefits related to these actions, it is necessary to provide additional clarification to assist the regions when entering this data into ICIS. The following revised guidance describes the process by which FIFRA NORAs and NOWs should be entered into ICIS. Please note that neither NORAs nor NOWs will be counted as Administrative Compliance Orders (ACOs) in the annual results.

#### **FIFRA Notices of Refusal of Admission (NORAs)**

As outlined in the FY 2014 Case Conclusion Data Sheet (CCDS) guidance, FIFRA NORAs (commonly referred to as "import denials") are non-penalty, final agency actions, and should be recorded in ICIS along with complying action values and environmental benefits resulting from these enforcement actions, as follows:

- Final Order Type: **EPA/Customs Import Enforcement Action**
- Enforcement Action Type: **FIFRA 17(c) Importation**
- Enforcement Action Type Code: **17(c)**

### Environmental Benefits

Under the FY 2014 guidance, NORA actions that result in reduction or elimination of an ongoing release of pollutants into the environment should be recorded in ICIS under the environmental benefit category "**Reduction of On-going Releases.**" The pesticide complying action type for these particular actions is entitled, "**Import Pesticide Returned to Foreign Origin.**"

In some cases, it may be possible to document that the initial entry denial also resulted in a "**Prevention of Future Releases.**" In these situations, because the respondent typically requests to work with EPA to bring their violative product(s) back into compliance, the Agency has access to the documents underlying the environmental benefit. Depending on the facts of the case the complying action can fall within one or more of the following complying action types: "Pesticide Label Revised," "Production Ceased," "Manufacturing Change," and "Container Change" (e.g., child resistant packaging). If the complying action has a preventive impact on future anticipated shipments of the same product coming into the US, calculate the pounds prevented for future releases. In order to calculate the pounds reduced, annualize the company's one-year production (based on FIFRA Section 7 reporting data) and count that quantity as "**Prevention of Future Releases.**" However, since annualized production data would be considered FIFRA Confidential Business Information (CBI), this preventive quantity cannot be entered directly into ICIS and must be submitted with the Regional Administrator/Office Director end-of-year certification.

### Annual Results

- The initiation and conclusion of NORAs counts will not be counted in the Agency's GPRA enforcement action Annual Results.
- Environmental benefits from NORAs will be included in the Agency's Annual Results in both the "*Estimated Toxics and Pesticides Reduced, Treated or Eliminated (pounds)*" and the "*Toxic Chemicals and Pesticides Prevented from Misuse/Environmental Release (Pounds)*" measures. The "*Estimated Toxics and Pesticides Treated or Eliminated (pounds)*" is a FY 2017 GPRA measure.

### FIFRA Notices of Warning (NOWs)

FIFRA §§ 9(c)(3), 14(a)(2), and 14(a)(4) provide the EPA with the authority to issue Notices of Warning (NOWs) to resolve noncompliance. A FIFRA NOW is neither a notice of violation nor a notice of noncompliance. These statutorily required FIFRA NOWs are used in lieu of assessing penalties, resolve the violations and are considered final agency actions. Beginning in FY 2017, they will be entered into ICIS as formal administrative actions using the following steps:

- Administrative Formal (*Note the change to Administrative Formal: Previously, FIFRA NOWs were entered as informal actions*)
- Enforcement Action Type: **FIFRA – Formal Notice of Warning (NOW)**
- Final Order Type: **Administrative Non-Penalty Order (FIFRA Only)**
- Enforcement Type Code: **14A (non-penalty)**

### Environmental Benefits

FIFRA NOWs that result in the reduction or elimination of a release of pollutants into the environment should be recorded in ICIS under the environmental benefit category “**Reduction of On-going Releases.**” Depending on the facts of the case, the pesticide complying action types for FIFRA NOWs are the same complying action types used for administrative penalty orders.

In some cases, the action may result in a “**Prevention of Future Releases.**” The pesticide complying actions for formal FIFRA NOWs are the same complying action types used for administrative penalty orders. If the complying action has a preventive impact, annualize the one-year production, if the data is available, and count that quantity as, “**Prevention of Future Releases.**” Annualized production data is considered FIFRA CBI and therefore the preventive quantity cannot be entered directly into ICIS and must be submitted separately with the Regional Administrator/Office Director end-of-year certification.

### Annual Results

- The initiation and conclusion of FIFRA NOWs will not be counted in the Agency's GPRA enforcement action Annual Results.
- Environmental Benefits from FIFRA NOWs will not be included in the Agency's GPRA Annual Results, but will be tracked for the next two years. The Agency will subsequently evaluate whether these environmental benefits should be included in the Agency's GPRA Annual Results.

If you have any questions concerning FIFRA NORAs or FIFRA NOWs, please contact Yolaanda Walker at: [Walker.Yolaanda@epa.gov](mailto:Walker.Yolaanda@epa.gov) or (202) 564-4281.

### **3. FIFRA Section 7 Expedited Settlement Agreements (ESAs)**

FIFRA Section 7(c) and 40 CFR Part 167 require pesticide producing registered establishments to submit initial and annual production reports, using EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments. FIFRA §14(a)(1) provides EPA with the authority to issue an administrative penalty action (pursuant to 40 CFR Part 22) for violations of FIFRA including FIFRA Section 7(c).

In January 2014, EPA developed and initiated an Expedited Settlement Pilot Program to address certain FIFRA Section 7 violations. Under the pilot, a FIFRA ESA could only be used for the following specifically-identified Section 7(c) reporting violations:

- A. Late Reporting
- B. Non-Reporting
- C. Incomplete Report – Minor
- D. Incomplete Report – Major

The pilot program concluded in January 2017. After reviewing the pilot program, OCE decided to continue using ESAs as another enforcement tool to address FIFRA Section 7 noncompliance. To record FIFRA Section 7(c) actions in ICIS that are resolved through the FIFRA ESA program, a new enforcement type is now available in ICIS.

The following enforcement action type should be used for this action.

- Enforcement Action Type: **FIFRA 14A Action for Penalty – Expedited Settlement Agreement**
- Enforcement Type Code: **14A**

For additional information, contact: James Miles, Office of Civil Enforcement, at: 202-564-5161, or via email at: [miles.james@epa.gov](mailto:miles.james@epa.gov) or Yolaanda Walker, Office of Civil Enforcement, at: 202-564-4281, or via email at: [walker.yolaanda@epa.gov](mailto:walker.yolaanda@epa.gov)

#### **4. Changes to ICIS Enforcement Action Types for RCRA Subtitle I Expedited Settlement Agreements and RCRA Field Citations**

EPA is authorized under Section 9006 of RCRA Subtitle I to take enforcement actions and assess civil penalties for violations of Underground Storage Tank (UST) requirements, including technical standards and financial responsibility requirements, promulgated under Subtitle I. All such orders are processed pursuant to 40 CFR Part 22.

##### Background

In July 2014, EPA developed and initiated an Expedited Settlement Agreement (ESA) Pilot Program to address certain violations of UST requirements. The UST ESA pilot was used to resolve violations addressed under a prior field citation that have been repeated and certain first-time violations that are not covered by the UST Field Citation Program. Prior to the UST ESA pilot, only RCRA field citations were entered in ICIS using *RCRA 9006 AO Form Comp and/or Pen (UST) - UST Expedited Settlement Program*. Beginning with the ESA UST pilot, ICIS users have been entering both ESAs and field citations using the enforcement type: *RCRA 9006 E AO for Comp And/or Pen (UST) - UST Expedited Settlement Program*. To differentiate between the two programs, ICIS users were entering "- ESA Pilot" in the enforcement action name for expedited settlement agreements.

The pilot program will conclude in July 2017. OCE determined that UST ESAs could be used as another enforcement tool to address UST compliance. In FY 2017, ICIS will have two separate enforcement action types available to differentiate between the two programs. The enforcement action types will be:

1. RCRA 9006 UST – ACO or APO – Expedited Settlement Agreement
2. RCRA 9006 UST – ACO or APO – Field Citation

Headquarters will announce to ICIS-Users once the selections are available. Once the new enforcement action types are available, records for FY 2017 should be updated beginning with October 1, 2016.

For additional information, contact: James Miles, Office of Civil Enforcement, at: 202-564-5161, or via email at: [miles.james@epa.gov](mailto:miles.james@epa.gov) or Yolaanda Walker, Office of Civil Enforcement, at: 202-564-4281, or via email at: [walker.yolaanda@epa.gov](mailto:walker.yolaanda@epa.gov)

### **5. Expanding Emergency Planning and Community Right-to-Know Act (EPCRA) §313 Compliance Monitoring Activities Beyond Traditional On-Site Inspections**

OECA's decision to expand beyond the traditional on-site inspections and include the use of off-site compliance monitoring activities takes advantage of enhanced technology and maximizes the Agency's resources by helping regions evaluate regulated entities' compliance effectively and efficiently. OECA, in coordination with the regions, states and state associations, developed an expanded list of off-site compliance monitoring activities. Off-site activities can be an important element in a Region's compliance monitoring plan.

FY 2016 was a pilot year to implement a compliance monitoring activity change for the EPCRA §313 program. Specifically, OECA requested that the regions input into ICIS all off-site record reviews (sometimes referred to as "desktop audits"). While these off-site record reviews were not counted to fulfill a portion of their FY 2016 EPCRA §313 01 and 02 ACS commitments, regions will be able to use off-site record reviews to fulfill a portion of their FY 2017 ACS commitments. In addition, the EPCRA §313 off-site record reviews will count toward the Agency's overall inspection counts. This information captures an additional regional compliance monitoring activity that Headquarters and the regions may use for program management.

If a Region decides to use the voluntary off-site record review for ACS commitments, the following conditions apply:

- the activity must be conducted for the purpose of making a compliance determination; and
- the off-site activities must be conducted by an authorized inspector (consistent with appropriate federal or tribal authority) or other credible regulator (e.g., an individual with sufficient knowledge, training, or experience to assess compliance).

Regions should use the ICIS EPCRA §313 off-site record review category to record all EPCRA §313 off-site record reviews for both non-reporter and data quality off-site record reviews. In addition, data to be entered into ICIS includes:

- Facility-specific information and compliance evaluation actions consistent with EPCRA; and
- Results of activities consistent with the EPCRA §313 program (e.g., violations).

EPCRA off-site record review counts and names lists will be captured in the ICIS Compliance Inspection/Evaluation Report.

For further information, please contact Kathy Clark at (202) 564-4164 or [clark.kathy@epa.gov](mailto:clark.kathy@epa.gov).

#### **6. Certain Voluntary Disclosures Still Required to be Entered into ICIS**

Since December 9, 2015, EPA has implemented a centralized web-based portal that receives and automatically processes certain self-disclosed civil violations of environmental law. Consistent with the Interim Guidance on Implementation of the eDisclosure System for Automating the Receipt and Processing of Self-Disclosed Civil Violations, Regional and Headquarters offices are reminded that they need to enter the following data into ICIS: (1) new owner disclosures; (2) initiative-driven disclosures, approved by Headquarters, that do not use eDisclosure; (3) non-eDisclosure-generated resolutions (*e.g.*, administrative penalty orders); and (4) new hard copy disclosures that are not resubmitted electronically into the eDisclosure system.

For further information, please contact Phil Milton at 202-564-5029 or [Milton.philip@epa.gov](mailto:Milton.philip@epa.gov).

#### **National Enforcement Initiative (NEI) Reporting**

#### **7. National Enforcement Initiative (NEI) Reporting Guide for FY 2017 and NEI Reports in ICIS**

##### Updated NEI Reporting Guide

An updated "Guide for Reporting on the OECA National Enforcement Initiatives (NEIs)" ("the Guide") will be posted to the OECA Enforcement & Compliance Reporting Process intranet site (<http://intranet.epa.gov/oeca/ec-reporting-process.html>). This Guide provides a complete description of what NEI data must be reported at end-of-year (EOY) FY 2017, how to enter the data to ICIS, and by what mechanism this data is to be reported (data system or manual). Please make use of the Guide for reporting NEI data, particularly reporting of NEI data to ICIS, keeping in mind that the NEI reporting requirements and mechanisms vary somewhat NEI to NEI.

##### NEI ICIS Reports

For managing the NEIs, and for certifying the accuracy and completeness of the NEI data for EOY FY 2017, please use the available ICIS NEI reports and manual spreadsheets. The ICIS NEI reports are:

- A) Certification National Enforcement Initiative Case Counts FY 2011-FY2019
- B) FY2011-2019 NEI Inspection-Evaluation Report (not posted yet)
- C) National Enforcement Initiative Environmental Benefits (Environmental Benefit Reports folder)
- D) NSR-PSD NEI Investigations Report - review for Cement, Acid, and Glass investigations
- E) NSR-PSD NEI Spreadsheet Report

- F) Municipal NEI Spreadsheet Report – review for CSO and SSO (in the MUNIS subfolder)
- G) NEI Compliance Determination Report
- H) Industrial Dischargers NEI Spreadsheet Report (coming)
- I) RCRA-Air NEI Spreadsheet Report (coming)
- J) MS4 NEI Spreadsheet Report (coming)
- K) Possible additional new reports

*These reports are posted in the ICIS National Standard Reports – National Enforcement Initiatives (NEIs) folder unless indicated otherwise.*

For further information, please contact Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov), or Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

## **8. ICIS Reporting on Carryover and New NEIs**

Accurate and complete reporting of NEI data to ICIS will continue to be important for the new round of NEIs. Below is a brief description of what data needs to be reported to ICIS for each of the NEIs and how that reporting may have changed for NEIs that have carried over into the new, FY17-19 cycle. (As noted above, the NEI Reporting Guide is being updated and will provide detailed instructions on what data needs to be entered into ICIS for each NEI, and how to enter it.)

### **Carryover NEIs (5)**

For some carryover NEIs (*NEIs that have been carried-over from the FY14-16 cycle into the FY17-19 cycle*) the reporting requirements will be the same as they were for the FY14-16 cycle. For others the reporting requirements change a bit.

**NSR and Municipal Infrastructure (Muni)** – Reporting for these two NEIs does not change. NEI investigations, inspections and enforcement actions must be flagged with the NEI in ICIS, and the addressed/ no further action status of each NEI facility must be recorded on the case file screen. For the Muni NEI, the regions must also record the initiation of an enforcement action (*case referred to DOJ or administrative complaint filed*) using the Initiated Action fields on the Case File screen.

**Air Toxics (AT)** – For the Air Toxics NEI, there are a few reporting changes: 1) there is no longer an AT NEI focus on leak detection and repair (LDAR), and there is now a new focus on emissions from tanks (note: LDAR-related activities completed in 2017 should be reported under the Excess Emissions sub-category instead); and 2) the definitions for “addressing actions” have changed, and there are now definitions for “initiated actions” and an associated initiated action reporting requirement. (See the section below titled, “*National Enforcement Initiatives: Initiated, Addressed, and No Further Action Definitions and Data Entry Requirements - for New and Carry-Over NEIs.*”) Any facility inspected/evaluated or investigated under this NEI must have an addressed/no further action determination recorded in ICIS, and any NEI facility for which formal enforcement is planned must have the Initiated Action field on the Case File screen completed.

**Energy Extraction** - For this NEI, the definitions for “addressing actions” has been changed (to the definitions that are now common across 5 of the NEIs) and definitions for

“initiated actions” have been added (along with associated ICIS reporting requirements). (See the section below titled, “*National Enforcement Initiatives: Initiated, Addressed, and No Further Action Definitions and Data Entry Requirements - for New and Carry-Over NEIs.*”) Any facility inspected/evaluated or investigated under this NEI must have an addressed/no further action determination recorded in ICIS, and any NEI facility for which formal enforcement is planned must have the Initiated Action field on the Case File screen completed.

**CAFO** – CAFO inspections and enforcement actions under this NEI will continue to be flagged in ICIS (on the Compliance Monitoring and Enforcement Action screens) but tracking of addressing actions and no further action determinations for this NEI is discontinued. Manual reporting to the CAFO SIT also will be continued, and will involve submitting: 1) a mid-year report to the SIT that describes the work the region is doing under the new focus areas of the FY17-19 CAFO NEI; and, 2) a progress report like the one submitted for FY 2016 but with an added, new section that summarizes any work done by the region to support the new focus areas of the CAFO NEI.

### New NEIs (3)

**RCRA-Air, Chemical Accident Risk Reduction (CARR), and Industrial Dischargers (ID)** – The reporting requirements are set forth in the NEI Reporting Guide. In general: 1) all enforcement actions and inspections/evaluations done under these NEIs must be flagged in ICIS; 2) any facility “initiated” or “addressed” determination must be entered into the Case File screen. This means that any facility inspected/evaluated or investigated under these NEIs **must** have an addressed/no further action determination recorded in ICIS. It also means that any NEI facility for which formal enforcement is planned must have the Initiated Action field completed on the Case File screen.

When entering enforcement action, compliance monitoring and Case File activities into ICIS for the new NEIs, the regions should verify that the facilities/program interests linked to the activity have the appropriate universe indicator flag. The Universe Indicator flags for the priority facilities for these two NEIs will be imported into ICIS in Quarter 3 of FY 2017.

### Concluded NEI (1)

**Mineral Processing** – Although this NEI was not continued for the FY17-19 cycle, Regions should continue to enter to ICIS “facility addressed” information for mineral processing facilities that had an enforcement action initiated under the NEI in FY 2016 or earlier, but are being concluded in FY 2017 or later. This will allow us to continue to track progress in finally addressing the facilities that had enforcement actions initiated under this NEI. In addition, Mineral Processing NEI enforcement action conclusions in FY 2017 and later should be flagged with the FY 2016 Mineral Processing Phosphoric or Non-Phosphoric NEI flag. This reporting will allow us to continue to track progress in finally addressing the facilities that had enforcement actions initiated under this NEI.

For further information, please contact Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov), or Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

**9. National Enforcement Initiatives: Initiated, Addressed, and No Further Action  
Definitions and Data Entry Requirements - for New and Carry-Over NEIs**

For FY 2017, the definitions of “Initiated,” “Addressed,” and “No Further Action” for each NEI are set forth in the table below. For some of the carryover NEIs from FY14-16, this definition has changed. For others it has remained the same. Five NEIs now use the same definitions for these terms: Air Toxics, RCRA-Air, Industrial Dischargers (ID), Chemical Accidents Risk Reduction (CARR), and Energy Extraction. The CAFO NEI is no longer using these terms at all, so it is not necessary to enter data into the ICIS Case File screen for this NEI. NSR and Municipal Infrastructure have carried over the definitions used in the FY14-16 NEI round.

**For every NEI except CAFO, the regions need to enter facility Addressed/ Controlled, and No Further Action status information into ICIS.** This data must be entered to ICIS for every NEI facility that is inspected and/or for which an enforcement action is undertaken.

**In addition, the requirement to report to ICIS “Initiated Action” data (on the Enforcement Action/Case File screen) for NEI facilities for which a region is planning to bring a formal enforcement action is now required for all NEIs except NSR and CAFO.** In past FYs this reporting was only required for the Municipal Infrastructure NEI. This reporting provides a better understanding of level of activity and progress of an NEI than is provided by looking at only facilities that have been addressed.

**NEI Initiated Action, Addressing Action and No Further Action Types in ICIS –  
NEI by NEI**

<b>Concentrated Animal Feeding Operations (CAFOs)</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
<i>None</i>	<i>None</i>	<i>None</i>
<b>Mineral Processing</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
<i>None</i>	Federal Consent Decree	<i>None</i>
	Federal Final Administrative Orders (AO, ACO, AOC, CAFO, FAPO)	
<b>Air Toxics</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Initiation of negotiation of administrative order on consent	Federal administrative order issued - signed AOC, Effective UAO, or CAFO	Inspection, Evaluation, or Investigation determined no or minor violations
Issuance of Unilateral Admin Order (UAO)	Federal final administrative penalty order (FAPO) issued	State equivalent civil judicial enforcement action concluded or final admin order issued

Filing of administrative complaint	Federal civil judicial consent decree lodged	State or federal permit issued with compliance schedules
Referral of a federal civil judicial action to DOJ		Other approved by SIT
<b>RCRA-Air</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Initiation of negotiation of administrative order on consent	Federal administrative order issued - signed AOC, Effective UAO, or CAFO	Inspection, Evaluation, or Investigation determined no or minor violations
Issuance of Unilateral Administrative Order (UAO)	Federal final administrative penalty order (FAPO) issued	State equivalent civil judicial enforcement action concluded or final admin order issued
Filing of administrative complaint	Federal civil judicial consent decree lodged	State or federal permit issued with compliance schedules
Referral of a federal civil judicial action to DOJ		Other approved by SIT
<b>New Source Review (NSR/PSD)</b>		
<b>Initiated Action Types</b>	<b>Controlled Action Types</b>	<b>No Further Action Types</b>
<i>None</i>	Federal Consent Decree	Been reviewed for compliance with NSR/PSD
	Controlled to NSR/PSD levels, repowered, or shutdown	
<b>Municipal Infrastructure</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Federal Action Initiated	Federal Final Administrative Compliance or Penalty Orders	Federal or State Evaluation determined no or minor violations
State Action Initiated	Federal Civil Judicial Complaint filed w/ a CD	Federal NPDES permits that comport with policies
	Federal Civil Judicial Complaint filed w/o a CD	State equivalent enforcement action
	MS4s- Phase 1 – System Addressed	State NPDES permits that comport with policies
	MS4s- Phase 2 – System Addressed	MS4s-Phase 1-System No Further Action
		MS4s-Phase 1-Co-Permittee, No Action Taken
		MS4s-Phase 2-System No Further Action
		MS4s-Phase 2-Co-Permittee, No Action Taken
		Other approved by WED DD

<b>Chemical Accident Risk Reduction</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Initiation of negotiation of admin order on consent	Federal administrative order issued - signed AOC. Effective UAO, or CAFO	Inspection, evaluation, or investigation determined no or minor violations
Issuance of Unilateral Admin Order (UAO)	Federal final administrative penalty order (FAPO) issued	Other approved by WCED DD
Filing of administrative complaint	Federal civil judicial consent decree lodged	
Referral of a federal civil judicial action to DOJ		
<b>Industrial Dischargers</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Initiation of negotiation of admin order on consent	Federal administrative order issued - signed AOC. Effective UAO, or CAFO	Inspection, evaluation, or investigation determined no or minor violations
Issuance of Unilateral Administrative Order (UAO)	Federal final administrative penalty order (FAPO) issued	State equivalent civil judicial enforcement action concluded or final administrative order issued
Filing of administrative complaint	Federal civil judicial consent decree lodged	State or federal permit issued with compliance schedules
Referral of a federal civil judicial action to DOJ		Other approved by WED DD
<b>Energy Extraction</b>		
<b>Initiated Action Types</b>	<b>Addressed Action Types</b>	<b>No Further Action Types</b>
Initiation of negotiation of admin order on consent	Federal administrative order issued - signed AOC. Effective UAO, or CAFO	Inspection, evaluation, or investigation determined no or minor violations
Issuance of Unilateral Administrative Order (UAO)	Federal final administrative penalty order (FAPO) issued	State equivalent civil judicial enforcement action concluded or final administrative order issued
Filing of administrative complaint	Federal civil judicial consent decree lodged	State or federal permit issued with compliance schedules
Referral of a federal civil judicial action to DOJ		Other approved by OCE DD

For further information, please contact: Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov), or at Dan Klaus 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

**10. MS4 NEI Reporting: Data Migration and Training Coming in FY 2017 (Delayed from FY 2016)**

In Quarter 3 of FY 2017, MS4 segment reporting of the Municipal Infrastructure NEI will be transferred from manual reporting to ICIS. The data migration and data entry to ICIS for the MS4 NEI will be unique because of the need to track the status of MS4 systems, in addition to individual MS4 permittees and co-permittees. To do this will require the use of the "Associated Permits" data field in ICIS-NPDES, a new ICIS Spreadsheet Report specifically designed for the MS4 data, and creation of ICIS Case File determination records that address the MS4 permittees, individual co-permittees, and the overall MS4 system. OECA will provide training for the regions on MS4 NEI ICIS data entry near the time of the data migration to ensure the regions understand how the data is to be recorded in ICIS, particularly how to properly enter MS4 Case File records.

Until the MS4 NEI data migration occurs, the regions will need to continue to input MS4 data to the manual MS4 spreadsheets that are distributed and maintained by the Muni NEI Strategy Implementation Team.

For further information, please contact Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

**11. NEI Data Migrations for NSR/PSD (Delayed from FY 2016)**

In Quarter 3 of FY 2017, the Office of Compliance intends to upload to ICIS information on NSR/PSD NEI facilities for which a determination has been made that no further action at that facility is required. (This data was not previously imported to ICIS due to possible FOIA concerns.) The addition of this data to ICIS will assure that managers who use ICIS to review the status of the NSR/PSD NEI universe will have complete information on the status of each facility. The data will be uploaded to the Facility No Further Action data field on the Case File data screen. If Case File information already exists for a facility in ICIS, that information will not be overwritten by the import.

At the same time, OECA plans to import inspection/investigation information for NSR/PSD NEI facilities. Importing this data into the ICIS Compliance Monitoring module is too complex, so the data will be imported into the Initiated Action data field on the Case File data screen (with modified drop-down menus). Since historical inspection and investigation data for NSR/PSD NEI sources were previously maintained in AFS, the inspection data for these facilities in ICIS is sometimes incomplete or not flagged appropriately. The addition of this data in the ICIS Case File screen will allow managers to have reliable information on the inspection status of these facilities, including through the use of modified NSR/PSD NEI Spreadsheet Reports. By importing this data into the Case File screen, inspection and investigation data records in the ICIS Compliance Monitoring module will not be affected. However, if the Case File Record for a facility exists as a result of the import, that Case File record should be amended to add any NEI addressing action instead of creating a new Case File record.

For further information, please contact Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

## **12. NEI Universe Data Imports for New NEIs**

After the Strategy Implementation Teams (SITs) have finalized the focus area universes for the RCRA-Air and Industrial Dischargers NEIs, OECA plans to import the universe indicator flags for these facilities into ICIS. This will allow us to track progress in addressing these universes using the spreadsheet reports for the new NEIs that will be created in ICIS. Once the universe indicator flags have been imported into ICIS, the regions should ensure that all of the facility interests that are associated with new NEI activities for the RCRA-Air or Industrial Dischargers NEIs have the appropriate universe indicator flags.

Regions should not be changing or adding the universe indicator flag to ICIS facility interests without approval from the SITs. Prior to the import of the universe indicator flag, regions may still enter compliance monitoring, enforcement action, and case file records for these NEIs in accordance with the Guide for Reporting on the OECA National Enforcement Initiatives.

For further information, please contact Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

## **13. Reporting Environmental Benefits for NEI Cases with Multiple NEIs, and/or Core Program Activities**

While reporting environmental benefits for NEI Cases has been a requirement for several years, recent examples of data entry errors suggest a need for clarification for instances where multiple NEIs and/or OECA Core Program activities are involved:

- Only the portion of costs and quantitative environmental impacts of complying action/injunctive relief for final orders specifically related to the each NEI should be flagged for that priority.
- In instances where multiple NEIs or core program activities are involved, the costs and environmental impacts must be broken out for each priority. For example:
  - in municipal infrastructure cases that involve both CSOs and SSOs, the total costs and environmental impacts should be divided between the NEIs based on the portion of the case estimated to be related to each one.
  - In Air Toxics NEI cases, only speciated air toxics or total hazardous air pollutants should be attributed to the air toxics priority. Criteria air pollutants and greenhouse gases should be associated with the OECA Core Program.
- In order to flag the costs and environmental impacts in the Complying Action/Injunctive Relief screen, all of the priorities and/or OECA Core Program must first be selected on the Final Order – Basic Info screen.

For further information, please contact Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov) or Dan Klaus at 202-564-7757 or [klaus.dan@epa.gov](mailto:klaus.dan@epa.gov).

## **14. New Metric for Reporting Environmental Benefits from CAA 112(r) Cases**

Historically, although there are methodologies in the Case Conclusion Data Sheet (CCDS) Guidance for calculating preventative environmental benefits from CAA section 112(r) cases, there has been no metric under which these benefits could be reported. With the introduction of

the Chemical Accident Risk Reduction (CARR) NEI, a new metric was created for reporting environmental benefits achieved through 112(r) cases. The new preventative metric, which will be added to ICIS, is “Pounds of Extremely Hazardous Substances Properly Managed.” The methodologies for calculating benefits from 112(r) cases are found on pages 4-30 to 4-32 of the CCDS guidance.

For further information, please contact Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov).

## **Superfund Reporting**

### **15. Superfund Enterprise Management System (SEMS) in FY 2017**

The Office of Site Remediation Enforcement (OSRE) will continue regular protocol with regard to accomplishments reporting. In FY 2017, OSRE pulled mid-year accomplishments data from SEMS. Likewise, final end-of-year accomplishments data will be pulled from SEMS on the 10<sup>th</sup> business day of October 2017. As in past years, OSRE will provide certified accomplishments data from SEMS to OC as part of its end-of-year certification process.

If you have questions about Superfund Reporting, please contact Mary Bell at 202-564-2256 or [bell.mary@epa.gov](mailto:bell.mary@epa.gov).

## **Environmental Justice**

### **16. EJ 2020 Action Agenda: Reporting**

In FY 2016, EPA released a five-year plan for making further process in addressing environmental justice (EJ) issues, titled EJ 2020 Action Agenda. (See [https://www.epa.gov/sites/production/files/2016-05/documents/052216\\_ej\\_2020\\_strategic\\_plan\\_final\\_0.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/052216_ej_2020_strategic_plan_final_0.pdf).) The enforcement section of the EJ 2020 Action Agenda (chapter 4) sets forth three EJ 2020 progress measures for the enforcement program:

- Percent of enforcement actions initiated by EPA in overburdened communities.
- Number of compliance and enforcement strategies focused in the most overburdened communities (*Action 1.2*).
- Number of EPA enforcement settlements negotiated each year that incorporate environmental monitors and/or transparency tools (*Action 3.1: By the end of 2020, EPA will double the total annual national number of settlements achieved that incorporate environmental monitors and/ or transparency tools in FY 2015*).

Data for the first metric can be obtained from ICIS based on the EJ reporting currently required on the Formal Enforcement Action screen. Data for the second metric can be obtained from a SharePoint site (still to be created) where the strategies will be housed.

Data on the third metric cannot be recorded in ICIS in a way that it is easily retrievable, so this information may be collected manually from the regions at EOY.

For further information, please contact Daniel Palmer at 202-564-5034 or [palmer.daniel@epa.gov](mailto:palmer.daniel@epa.gov).

## **Reports**

### **17. Updated Report: Certification National Enforcement Initiative Case Counts FY 2011 – FY 2019 report**

The “Certification National Enforcement Initiative Case Counts FY 2011 – FY 2016” report has been updated to display the new FY 2017 NEIs and inform the user on which NEIs ended in FY 2016. The report has been renamed to “Certification National Enforcement Initiative Case Counts FY 2011 – FY 2019.”

The following FY 2017 NEIs have been added:

- NEI Chemical Accident Risk Red
  - Ammonia Ref
  - Chemical Manufacturing
  - Fertilizer Dist
  - Gas Processing
  - Refineries
- NEI Industrial Dischargers
  - Chemical Manufacturing
  - Food Processing
  - Mining
  - Primary Metal Manufacturing
- NEI Air Toxics RCRA Air
  - Basic Chem Mfg
  - TSD
  - Other

The following FY 2017 sub-initiative has been added:

- Air Toxics – Tanks

The following sub-initiative ended in FY 2016:

- Air Toxics – LDAR
- CAFO Regional Initiative Areas

For further information, contact Emery Harriston at 202-564-2497 or [harriston.emery@epa.gov](mailto:harriston.emery@epa.gov).



## **18. Consolidated Reports: Four Inspection Conclusion Data Sheet (ICDS) Reports Now Consolidated into One ICIS Report**

Four ICDS reports have been consolidated into one report. These are:

- ICDS Deficiencies Observed and Communicated.
- ICDS Facilities Took Action.
- ICDS Tier 1 CA Provided, and
- ICDS Total Inspections Subject To ICDS

The name of the new report is “**ICDS Inspections All, Deficiencies, Facility Action, Tier 1 CA**”. The newly consolidated ICDS report may be found in the ICIS Federal and Enforcement Compliance Reports/National Standard Reports/Inspections Including ICDS folder.

In addition, the logic for the “CAA Stationary Source” category in the report was updated so only the specific FCEs, PCEs, Stack Tests counted for end-of-year reporting are included.

For further information, contact Emery Harriston at 202-564-2497 or [harriston.emery@epa.gov](mailto:harriston.emery@epa.gov).

## **19. ICIS DQR - APOs with No Notice Pleading and No Penalty**

The DQR - APOs with No Notice Pleading and No Penalty report is an ICIS data quality report (DQR) that identifies Administrative Penalty Orders (APOs) that neither report penalty values nor have the No Notice Pleading box selected.

If the APO should not have an amount assessed, please enter the reason into the ICIS final order comments field. The data quality report excludes certain actions based on text strings in the ICIS comment and summary fields. If one of the text strings below are entered in either the ICIS comment or summary fields then the action will not appear in the DQR report:

- without a penalty
- penalty mitigated
- penalty reduced to \$0
- mitigation of the penalty
- penalty reduced to zero
- no civil penalty
- no penalty

The DQR - APOs with No Notice Pleading and No Penalty report may be found under the ICIS National Standard Reports/DQR folder.

For further information, contact Emery Harriston at 202-564-2497 or [harriston.emery@epa.gov](mailto:harriston.emery@epa.gov).



## **20. Updated ICIS DQR Report: Federal Facility Actions Report**

The ICIS DQR Federal Facility Actions report has been updated to remove actions that were transferred from AFS. The report identifies enforcement actions that involve federal facilities. The report modification results in fewer actions requiring review.

For further information, contact Emery Harriston at 202-564-2497 or [harriston.emery@epa.gov](mailto:harriston.emery@epa.gov)

## **ICIS Updates**

### **21. New Subfolders Created for Some National Standard Reports**

In response to requests from several regions, we have created two new subfolders (“Outputs – Initiations and Conclusions” and “Outcomes – IR, SEP, Penalty Values”) for a number of reports that have been located in the National Standard Reports folder. These new subfolders are located within “Federal Enforcement and Compliance Reports” under the current “National Standard Reports” folder. The reports that have been moved to the new subfolders are:

Reports moved to Outputs – Initiations and Conclusions subfolder:

- Federal Enforcement Conclusions and NODs
- Federal Enforcement Conclusion and NODS with State by State Breakout
- Federal Enforcement Initiations
- Supplemental Referrals

Reports moved to “Outcomes – IR, SEP, Penalty Values” subfolder:

- Injunctive Relief, Penalty, and SEP Values – All Civil Cases
- Injunctive Relief, Penalty, and SEP Values with State Breakout
- Stipulated Penalties

If you have any questions about this new subfolder, please contact Sara Ager at 202-564-7968 or [ager.sara@epa.gov](mailto:ager.sara@epa.gov)

### **22. FE&C Dashboard Refreshed on a Weekly Basis**

Changes have been made in the FE&C Dashboard schedule for refreshing data. Due to the strain that the FE&C Dashboard nightly data refreshes put on ICIS performance, refreshes are being done weekly rather than nightly. The weekly refreshes began on February 24, 2017.

In order to accommodate our mid-year and end-of-year reporting activities, there will be brief periods (approximately two weeks) at mid-year and EOY when the Dashboard will be refreshed nightly in order to more readily conduct data quality reviews.

For further information, please contact Tony Galati at 202-564-2299 or [galati.anthony@epa.gov](mailto:galati.anthony@epa.gov)

## **Data Quality Reminders**

### **23. EPA Administrative Cases Should Not Have State Penalties**

A recent inquiry regarding EPA administrative cases found that some of these actions were reporting state penalty values in ICIS. In most EPA administrative cases there is not likely to be a state penalty that is part of the action. (However, there may be a concurrent state action.)

During the review, we found many of the "state penalties," were actually payments that had been entered into the wrong ICIS data field. This ICIS screen may not be as easily readable as other screens, so please ensure that the penalties collected are being entered in the correct ICIS data field.

The ICIS DQR - Penalties - Other Federal Agencies report has been updated to include a tab that identifies administrative actions where the ICIS State/Local Penalty Assessed Amount field is not null. The report has been renamed, DQR - Penalties Paid to Other Federal Agencies or States, and is located in the ICIS National Standards Reports/Data Quality Review folder.

If you have questions, please contact Emery Harriston at 202-564-2497 or [harriston.emery@epa.gov](mailto:harriston.emery@epa.gov)

### **24. Lead Regions Need to Communicate with Participating Regions on the Split of Case Outcomes**

This is a reminder that the Lead Region in multi-regional (aka national) actions is responsible for communicating with other participating regions on the split of case outcomes including the calculation of penalties, injunctive relief, and environmental benefits. There have been instances where one or more participating regions was not aware of the case progression or correct breakdown of one or more measures.

For further information, please contact Sara Ager at 202-564-7968 or [ager.sara@epa.gov](mailto:ager.sara@epa.gov)

### **25. Providing Timely Documentation of EPA-Issued Stipulated Penalty Demand Letters to the Cincinnati Finance Center (CFC)**

Each enforcement office must report into ICIS the payment of a stipulated payment by respondent/defendant whether that payment is made upon demand by EPA or DOJ or is paid automatically by respondent/defendant in the event of a Consent Decree (CD) violation. Furthermore, each enforcement office is required to track major CD milestones and reflect when EPA or DOJ has demanded the payment of stipulated penalties for the violation of the terms of the CD. In addition to this reporting, Regional and HQ enforcement offices are required to provide a copy of an EPA-issued demand letter for stipulated penalties to CFC within 5 business days of that letter's issuance. *See* OCFO policy at [http://intranet.epa.gov/fmdvally/policies/direct/2540/2540-09-p3\\_administrative\\_and\\_civil\\_judicial\\_penalties.pdf](http://intranet.epa.gov/fmdvally/policies/direct/2540/2540-09-p3_administrative_and_civil_judicial_penalties.pdf). *See* the May 22, 2015 memo, signed by Susan Shinkman and Cyndy Mackey, reminding senior enforcement managers that Regions and

HQ offices must send CFC copies of EPA-issued stipulated penalty demand letters within 5 business days of their issuance.

By way of background, the Office of the Inspector General (OIG) has found EPA's failure to provide timely documentation of enforcement-related accounts receivable to CFC to be a significant deficiency. In its audit of EPA's FY 2014 Financial Statement, the OIG called out EPA for failing to provide timely documentation to CFC of stipulated penalty demands and other receivables. In response, in May 2015, OCE and OSRE transmitted guidance to EPA senior enforcement managers reminding them to provide documentation to CFC within 5 business days of issuing a stipulated penalty demand letter.

For the period of FY 2016 through the first quarter of FY 2017, CFC's data reflects that EPA fails to meet this 5-day performance goal for EPA-issued demand letters in most cases. Because untimely documentation of stipulated penalty demands continues, EPA offices issuing stipulated penalty demand letters must remember to provide a copy of such letters to CFC within 5 business days of issuance. Unless we improve our performance significantly, we can expect OIG to continue to raise this issue.

For further information, please contact Susan O'Keefe at 202-564-4021 or [okeefe.susan@epa.gov](mailto:okeefe.susan@epa.gov)

## **26. Referral Definition and Receiving Credit for a Civil Judicial Referral**

There are incidents of records in ICIS for referrals that have not been transmitted to the Department of Justice (DOJ). This is a reminder that only referrals meeting the definition below **and** actually transmitted to DOJ (and supported by a source document listed below) may be entered in ICIS as a referral.

Please keep in mind that ICIS assists the Agency in reporting our activities to the public and to Congress. Therefore, what is in ICIS must be accurate as we cannot report publically to external stakeholders (including Congress) incorrect information (i.e., referrals that were developed but not actually sent to DOJ). To this end, please remember that all information (including referrals) entered in ICIS should be updated within **10 working days** of a status change.

**Referral definition** - A written request to another agency or unit of government to proceed with judicial enforcement relating to the violation(s) in question. These include actions brought to:

- Address non-compliance with environmental laws by a regulated entity;
- assess penalties for non-compliance;
- compel the recipient to perform or refrain from certain actions;
- recover costs; and/or
- collect money owed to the government under environmental laws.

Referrals entered into ICIS **must** be supported by one of the following source documents:

- Litigation report and/or cover letter for transmission of a litigation report;
- Letter referral.

Please remember the **ACTUAL DATE** the Regional Administrator or designee (for Regions), or the Office Director (for Headquarters initiated matters), signs the cover letter transmitting the litigation report to DOJ must be entered into ICIS as the “*actual date*” for the *Referred to Dept of Justice* sub activity. **Regional offices and headquarters should not create dates to generate records for case development work that did NOT lead to a referral to DOJ.**

Please direct any questions concerning ICIS data entry for judicial referrals to Sara Ager ([ager.sara@epa.gov](mailto:ager.sara@epa.gov))

## **27. Do Not Create New ICIS Referral Records for Supplemental Referrals**

A supplemental referral augments, or supersedes a civil judicial enforcement action that was previously referred. The supplemental referral may contain a request for DOJ to enforce the existing case or to amend or strengthen the existing case by adding any of the following:

- counts of the violations identified in the original referral.
- violations of additional statutes and/or law sections.
- facility locations, or
- defendants or potentially responsible parties (PRPs).

There may be other situations where the Agency provides supplemental information to strengthen an existing referral action, or to add national enforcement initiative information. In those situations, the *ICIS Supplemental Referral – Other* option should be selected (see below). When an existing open referral record is in ICIS, and a supplemental referral is transmitted to DOJ, then it should be entered into ICIS as a *Supplemental Referral* under the same enforcement action. **Do not create a new action, or enforcement action identifier for the Supplemental Referral. This leads to inaccurate reporting.** Supplemental referrals ARE included in the Agency’s Annual Results reporting.

There are three types of supplemental referrals tracked in ICIS:

- 1) Supplemental referrals adding parties or counts (new violations),
- 2) Supplemental referrals for consent decree enforcement, and
- 3) Supplemental referrals for special situations (e.g., Other).

To enter a Supplemental Referral in ICIS:

1. Open the original judicial referral.
2. Click on “Subactivities.”
3. Click on “Add Subactivity.”
4. Select from one of the three Supplemental Referral options.
5. Enter the Actual Date (from the date of the cover letter or email) and any other appropriate information.

Please direct any questions concerning ICIS data entry for civil judicial referrals or supplemental referrals to Sara Ager at 202-564-7968 or [ager.sara@epa.gov](mailto:ager.sara@epa.gov)

## **28. Closing Returned or Withdrawn Referrals**

When a referral record is created in ICIS the first milestone is the date the referral is transmitted to DOJ. If DOJ returns the referral to the Region or Headquarters or the Region or Headquarters withdraws the referral, the original referral record in ICIS must be closed **within 10 working days of the return or withdrawal.**

In some instances, the Region or Headquarters may decide to pursue the civil judicial action administratively. If EPA pursues the civil judicial action administratively, then a milestone date must be entered to close the civil judicial referral. **An enforcement action conclusion should NOT be entered into ICIS. In addition, the original judicial referral should NOT be flagged "Combined with Another Case."** Nothing was combined; the civil judicial action simply never went forward.

If the action is settled administratively, then a new administrative enforcement action should be created in ICIS and the results of the administrative conclusion should be entered into ICIS.

Please direct any questions concerning ICIS data entry for judicial referrals to Sara Ager 202-564-7968 or [ager.sara@epa.gov](mailto:ager.sara@epa.gov)

## **29. CERCLA 120(e) Records of Decisions (RODs) at Federal Facilities Must Be Entered in ICIS**

While all CERCLA RODs (federal and private) are required to be reported in SEMS, federal facility RODs must also be reported in ICIS as CERCLA 120(e) enforcement actions.

There have been some instances where the federal facility RODs were not reported in ICIS. It is important that these federal facility actions are in ICIS so that the environmental benefits (VCMA) associated with the federal facility RODs are included in the EPA's reported totals of contaminated soil and/or contaminated groundwater. This measure is a GPRA measure and as such, the Agency's results are reported to the Office of Management and Budget. In addition, the results are posted on the Agency's annual results website.

The February 2008 ICIS data entry guidelines for federal facility superfund enforcement actions may be found at the following URL:

<http://intranet.epa.gov/occa/oc/etdd/reporting/fy2008/refdocs/reportingfy08-attach9a5-icisdataentryfederalfacilicysuperfundenf2-28-08.pdf>

For further information, please contact Lance Elson at 202-564-2577 or [elson.lance@epa.gov](mailto:elson.lance@epa.gov)

## **30. Continuous Data Cleanup for Federal Enforcement Actions Migrated from AFS**

When AFS was the database of record for High Priority Violations (HPVs), EPA Regions and HQ had to report the enforcement response actions to both AFS and ICIS. They reported them to AFS because AFS was the database of record for HPV addressing and resolving actions. They reported them to ICIS because ICIS was the database of record for federal enforcement actions.

On October 19, 2014, the data from AFS was migrated to ICIS. At the time of migration, the decision was made to migrate all federal enforcement actions that were in AFS to ICIS, so that the relationship between the enforcement action and any HPV linked to it was maintained.

Where migration resulted in duplicate actions in ICIS, regions should delete the migrated record. But, before deleting any record that is determined by the Region to be a duplicate, the Region should ensure that any linked Case File with an HPV reported on it will maintain its current Status Type. For example, if the Case File has a Status Type of Addressed because an addressing enforcement action is linked to it, the Region must ensure the Case File will remain addressed by linking the enforcement action to it that will remain. Actions that were migrated from AFS have AFS\_MIG in its Created By field.

For more information, please contact Jason Swift at 202-564-6692 or [swift.jason@epa.gov](mailto:swift.jason@epa.gov).